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E.MBA, LL.M, Ph.D, PGDSAPM

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BBA. LL.B. (Hons.) (Amity University, Rajasthan); LL. M. (UPES, Dehradun) (Nottingham Trent University, UK); Ph.D. Candidate (G.D. Goenka University)

Subhrajit did his LL.M. in Sports Law, from Nottingham Trent University of United Kingdoms, with international scholarship provided by university; he has also completed another LL.M. in Energy Law from University of Petroleum and Energy Studies, India. He did his B.B.A.LL.B. (Hons.) focussing on International Trade Law.

ABOUT US

WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GRANT OF NOTIONAL INCREMENT – THE NEED FOR PROMPT COMPLIANCE WITH SUPREME COURT’S JUDGMENT IN CIVIL APPEAL NO. 2471/2023

AUTHORED BY - SATYA VENKATA RAO VASANTHARAO

Introduction

In the quiet of retirement, a former public servant reflects—his service concluded with dignity, yet a final entitlement, a notional increment due on the eve of retirement, remains elusive. The courts have spoken, the law is settled, and challenges dismissed. Still, he waits. Not for charity, but for the rightful recognition of service. What remains uncertain is not the law, but the will of those tasked with implementing it.

This Article seeks to highlight the growing disconnect between judicial pronouncements and administrative compliance, and to exhort the authorities to act decisively and without delay in implementing the judgment of the Hon’ble Supreme Court in **Director (A&A), KPTCL v. C.P. Mundinamani & Ors., Civil Appeal No. 2471 of 2023¹**.

Legal Background and Administrative reluctance

The controversy over the grant of an annual increment to government employees retiring the day following their increment date has led to litigation across the country. At its core lies the legal question:

“Is an employee who retires on the last working day of the month, but has completed a full year of service, entitled to the benefit of an annual increment though not in service on the increment grant date?”

This question was framed by the Supreme Court in the following manner

“The short question which is posed for the consideration of this Court is whether an employee who has earned the annual increment is entitled to the same despite the fact that he has retired on the very next day of earning the increment”?

This question was settled by the Hon’ble Supreme Court of India on 11 April 2023 in Civil

¹ Civil Appeal No 2471/2023 SCI dated 11th April 2023.

Appeal No. 2471/2023, wherein the Court upheld the entitlement of the employees to notional increment even though they retired on 30th June, one day before the increment was due on 1st July.

A quick reference to paras 6.4 and Para 6.5 of the Supreme Court order in its judgement dated 11th April 2023 will throw light on the judicial reasoning followed by the Supreme Court.

Para 6.4 “Now so far as the submission on behalf of the appellants that the annual increment is in the form of incentive and to encourage an employee to perform well and therefore, once he is not in service, there is no question of grant of annual increment is concerned, the aforesaid has no substance. In a given case, it may happen that the employee earns the increment three days before his date of superannuation and therefore, even according to the Regulation 40(1) increment is accrued on the next day in that case also such an employee would not have one year service thereafter. It is to be noted that increment is earned on one year past service rendered in a time scale. Therefore, the aforesaid submission is not to be accepted.

Para 6.5 “Now, so far as the submission on behalf of the appellants that as the increment has accrued on the next day on which it is earned and therefore, even in a case where an employee has earned the increment one day prior to his retirement but he is not in service the day on which the increment is accrued is concerned, while considering the aforesaid issue, the object and purpose of grant of annual increment is required to be considered. A government servant is granted the annual increment on the basis of his good conduct while rendering one year service. Increments are given annually to officers with good conduct unless such increments are withheld as a measure of punishment or linked with efficiency. Therefore, the increment is earned for rendering service with good conduct in a year/specified period. Therefore, the moment a government servant has rendered service for a specified period with good conduct, in a time scale, he is entitled to the annual increment and it can be said that he has earned the annual increment for rendering the specified period of service with good conduct. Therefore, as such, he is entitled to the benefit of the annual increment on the eventuality of having served for a specified period (one year) with good conduct efficiently. Merely because, the government servant has retired on the very next day, how can he be denied the annual increment which he has earned and/or is entitled to for rendering the service with good conduct and efficiently in the preceding one year”

To sum up the information in a tabular manner, the following table depicts the position of the court cases

Name of the Petitioner	Name of the Respondent	Case Number	Name of the Court	Date of order	Remarks
C.P.Mundina mani	KPTCL	55117-55121/2013	Karnataka High Court	24-04-2017	Writ petition dismissed
C.P.Mundina mani	KPTCL	4193/2017	Karnataka High Court	23-01-2020	Writ Appeal allowed
KPTCL	C.P.Mundina mani	2471/2023	Supreme Court of India	11-04-2023	Judgement confirming increment entitlement
Ministry of Railways	Various respondents	2400/2024	Supreme Court of India	06-09-2024	Interim Order issued to prevent further litigation,
Union of India	Various respondents a	36418/2024	Supreme Court of India	18-12-2024	Review petition dismissed

Post-judgment, numerous similarly placed retired employees gave representations to their respective employers seeking extension of the benefit. However, these were rejected based on the advisory view of the Department of Personnel and Training (DoPT), which held that the judgment applied only in personam—i.e., only to the original petitioners—and could not be extended to other

Litigation Post-Judgment and Judicial Clarification

The administrative refusal to implement the decision broadly prompted a new wave of litigation, imposing unnecessary burdens on an already strained judiciary. Notably, in Miscellaneous Application No. 2400/2024 (**Union of India v. M. Siddaraj**), the Supreme Court issued interim directions on 6 September 2024, clarifying that the benefit should be extended to non-parties who retired after the date of judgment.

The Union of India 's Review Petition (Diary No. 36418/2024), was dismissed by the Supreme Court on 18 December 2024, thus reaffirming the finality and binding nature of its April 2023 decision. The order of the Supreme Court is to the following effect.

“The Office Report dated 16.10.2024 indicates that this review petition is filed with defects. Such as, the position of the petitioner is not clear as he was not a party in this matter and the petitioner has not filed application for permission to file review petition. Moreover, there is inordinate delay of 461 days in preferring the Review Petition, which has not been satisfactorily explained. Even otherwise, having carefully gone through the Review Petition, the order under challenge and the papers annexed therewith, we are satisfied that there is no error apparent on the face of the record, warranting reconsideration of the order impugned. The Review Petition is, accordingly, dismissed on the ground of defects, delay as also on merits.”

DoPT's Office Memorandum and Legal Infirmary

During the pendency of the review petition, DoPT issued an Office Memorandum dated 14 October 2024, which instructed administrative departments on processing such claims but caveated that the same was subject to the outcome of the review petition. The gist of the Office memorandum dated 14th October 2024 is as follows

Para 7: The matter has been examined in consultation with the Department of Expenditure and department of legal affairs. It is advised that in pursuance of the order dated 06.09.2024 of the Honourable Supreme Court referred above, action may be taken to allow the increment on 1st July/01st January to the central government employees who retired/are retiring a day before it became due i.e on 30th June/31st December, and have rendered the requisite qualifying service as on the date of their superannuation with the satisfactory work and good conduct for calculating the pension admissible to them. As specifically mentioned in the orders of the Honourable Supreme Court, the grant of notional increment on 1st January/1st July shall be reckoned only for the purpose of calculating the pension admissible and not for the purpose of calculation of other pensionary benefits.

It may also be noted that these instructions are being issued in compliance of the interim orders dated 6 September 2024 of the Honourable Supreme Court in MA Dy.No.2400/2024 without prejudice to the legal stand of the Union of India in the matter and without prejudice to any change of law in this regard. Further, the action taken shall be subject to the final outcome of

the review petition Dy.no.36418/2024 pending before the Honourable Supreme Court, which is expected to be heard by the apex court in the week commencing 04.11.2024.

With the dismissal of the review petition on 18th December 2024, the foundational basis of the Office Memorandum stands extinguished. Legally, the OM has become infructuous and cannot continue to guide or restrict implementation.

Binding Nature of Supreme Court Judgments: It is a settled position in law that once the Supreme Court declares the law under Article 141 of the Constitution, the same binds all authorities, civil or administrative. In *Union of India v. Kamlakshi Finance Corporation Ltd.*,² “It is impermissible for subordinate authorities to ignore decisions of the superior Court by contending that some other view is possible.”

Similarly, in *Amrit Lal Berry v. CCE*,³, the Court emphasized that once a right is recognised by a court, similarly placed persons must not be driven to litigation for the same benefit.

Most pertinently, the Court in *Bengal Chemical & Pharmaceutical Works Ltd. v. Employees*⁴, cautioned that:

“Non-implementation of a judgment by administrative fiat undermines the rule of law and is an affront to judicial authority.”

Legal Position Post-Review Dismissal

With the Supreme Court’s dismissal of the review petition on 18th December 2024, the following legal consequences emerge:

1. The April 2023 judgment has attained finality.
2. The classification of the judgment as in personam no longer holds.
3. The benefit must be extended to all similarly situated employees.
4. The Office Memorandum dated 14 October 2024 is without legal force.
5. Delaying implementation undermines constitutional fidelity to Article 141.

² 1992 Supp (1) SCC 433

³ (1975) 4 SCC 714

⁴ (1999) 1 SCC 143

Way Forward

The logical and lawful consequence of the dismissal of the review petition is immediate compliance. The DoPT should take immediate steps to withdraw its Office Memorandum dated 14 October 2024 and issue fresh directions /instructions for the uniform and smooth implementation of the April 2023 judgment across ministries, departments, PSUs, and autonomous bodies. At the end of the day, the efforts of the concerned ministries mandated with the responsibility of implementing courts is to ensure that no fresh litigation is initiated against due them to non compliance or give rise to fresh litigations with ambiguous instructions. While DoPT has reportedly sought the opinion of the Attorney General of India on the definition of “pay,” it must be emphasised that such consultation cannot override the binding force of a Supreme Court ruling. Seeking further opinions may amount to a veiled form of resistance and could draw institutional censure.

Conclusion

The retired employee still waits—not just for a monetary benefit, but for the affirmation that justice, once pronounced, will be honoured in spirit and in action. When a constitutional court has declared the law and dismissed all avenues of challenge, the obligation on the administration is not optional—it is absolute. The continued delay to implement the judgment of the Supreme Court dated 11th April 2023, especially after the dismissal of the review petition on 18 December 2024, only deepens public mistrust in institutional accountability.

The law must not be seen as a closed chapter in courtrooms alone, but as a living command that must echo in every office it binds. It is time for the government to shift from seeking clarifications to showing compliance, from reviewing legality to restoring dignity. Only then will the promise of justice translate into the lived reality of those it was meant to serve.